IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 549 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHYAMLAL LALBHAI KEVAT & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1 - 3.
MR PD BHATE, APP for Opponent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/11/2007

ORAL JUDGMENT

In this appeal, the appellants-original-accused have challenged the judgment and order dated 12th July 1996 passed by the learned Additional Sessions Judge,

Ahmedabad in Sessions Case No.246 of 1992.

2. As emerging from the charge, Ex.2, framed by the learned Judge, prosecution case was that appellant No.1, accused No.1, Shyamlal was the father-in-law of deceased Mamta. Accused No.2, appellant No.2 was the brother-in-law of the deceased and husband of complainant Savitri and accused No.3 was the husband of the deceased. Deceased Mamta and Savitri are real sisters married to appellant Nos.3 and 2 respectively who are real brothers. Marriage took place on 22nd June 1991. On 4.4.92, Mamta committed suicide by hanging herself in her matrimonial home. This, according to the prosecution, was on account of the dowry demands and mental and physical torture meted out to her by the accused.

3. Though charge framed against the appellants was under section 304-B of the Indian Penal Code besides under sections 498-A and 306 of the Indian Penal Code, learned Additional Sessions Judge was pleased to convict the appellants only under section 306 and 498-A of the Indian Penal Code. He sentenced the appellants to undergo rigourous imprisonment for a period of 5 years and 2 years respectively for the said offences. He also imposed fine of Rs.500/- each for the separate offence.

4. Complainant Savitri was examined at Ex.18 as PW-2. In her deposition, she stated that she and

her sister Mamta had married the appellants Nos.2 and 3 respectively on the same day. They were staying in the same house along with their husbands' parents and other brothers and sister of the husband. The incident took place on 4.4.92 at 3.15 p.m. On the date of the incident, she and Mamta were beaten up by the father-in-law and were also abused. Mamta went to sleep in a separate room complaining that she is feeling pain on account of the beating. After about half-an-hour, when she tried to check on Mamta, she found that both the doors were locked from inside. Her younger brother-in-law removed the glass from the door and found that Mamta was hanging from the ceiling fan. Her aunt had come to her house on the same day. However, since she was upset, she did not tell anything to her aunt. The complaint was lodged with the police on the next day. She produced an inland letter written by her to her father which was given Ex.19.

In her cross-examination, she admitted that writing in the inland letter was written at different points of time. She, however, denied that what was written on the side of the letter was added later on. She agreed that in her complaint with the police, she had not stated that Mamta went to sleep in a separate room because of pain and half-an-hour thereafter, when she went to enquire whether Mamta had gone to sleep or not, she found both the doors locked from inside.

5. Father of the deceased Mamta, Rajaram, PW-3 was examined at Ex.20. In his deposition, he stated about the dispute regarding the family life of his daughters. He stated that when his daughters had come to Indore, they told him that the accused were harassing them. He further stated that when he reached Ahmedabad, his daughter Savitri told him that on the date of the incident, her in-laws had given beating and that on account of such beating, Mamta had committed suicide.

In his cross-examination, he stated that his daughters stayed in their matrimonial home only for about 1½ months after the marriage till the date of the incident. He admitted having written letter Ex.22 which was written by him to accused No.1.

6. PW-4, Sarojkumar was examined at Ex.23. He was a neighbour of the accused. He is also a distant relative of father of deceased Mamta. In his deposition, he stated that though he had heard that there were quarrels in the lives of Savitri and Mamta, he had never seen such quarrel himself. Father of the girls had told him to keep an eye and inform him if the girls have any difficulties. In fact, Rajaram had written a letter to the witness to take care of his daughters. His wife therefore, had called Savitri and Mamta to his home and asked whether they had any problem. The girls stated that they have no difficulty. He did not know why Mamta committed suicide. He had no information about the

quarrel in the family lives of Mamta and Savitri. In his cross-examination, he stated that he had never seen Savitri, Mamta, Omprakash and Shivprakash fighting. They were all living peacefully.

7. Vimlaben Dahyalal, PW-7 was examined at Ex.26. She was also residing in the neighbourhood of the accused. In her deposition, she stated that Mamta used to go to her house occasionally. She had heard that there was some quarrel in her family. On 2.4.92, there was some quarrel in the house of Mamta, but she did not know as to the reason of quarrel. On 4.4.92, at about 4.30 or 4.45 in the evening, doors Mamta's room was locked and the family members were shouting. Upon hearing the shouts, she came out of her house and saw many people gathered there. She was told that Mamta had committed suicide by hanging herself.

In her cross-examination, she stated that when Mamta and Savitri used to come to her house, she used to ask about their family life and the girls used to tell her that it is going on smoothly. They had no complaint of beating by their husbands or father-in-law.

8. Dr.Pratik Patel, PW-1, Ex.16 was the doctor who had carried out the post-mortem of the body of the deceased. He had found injuries on the right eye and on the chest of the deceased in addition to finding marks on the neck on account of hanging.

9. Narayan Kundu Mohane, PW-10, Ex.29 was the PSI who had initially inquired into the case as a suicidal death.

10. Balwant Nandram Brahmbhatt, PW-11, Ex.38, was the IO who had carried out the investigation.

11. In addition to the above oral evidence, prosecution also relied on the letter Ex.19 written by the complainant Savitri to her father in March 1992. In the said letter, Savitri had pleaded with her parents to take her back as it was not possible for her to live in the matrimonial home. She in fact, stated that she was forcibly married off on account of the small mistake on her part. She stated that she would marry wherever else her parents suggest, but she cannot stay in her matrimonial house. She stated that her in-laws are prepared to return everything given at the time of marriage. She requested her father to send her brother to take her back. On the side of the letter, she repeatedly requested her father to come and take her back. In the last line, she added that she and Mamta both be taken back or else they would not see them alive.

12. On the above basis, learned Senior Advocate Shri Shethna for the appellants submitted that the complaint was much belated thereby giving full opportunity for manipulations. It was contended that letter of Savitri, Ex.19, does not disclose any ill-

treatment by the in-laws.

It was further contended that the prosecution failed to establish that deceased Mamta committed suicide on account of the cruelty or harassment by the accused. It was contended that no specific instances were narrated and Savitri in her deposition had contradicted herself at several places.

13. On the other hand, learned APP, Shri Bhate opposed the appeal and submitted that learned Additional Sessions Judge has considered all aspects of the matter and there was sufficient evidence on record to suggest that the deceased Mamta committed suicide solely on account of physical and mental torture by the accused. He submitted that Mamta was aged only 18 years and the marriage lasted one year. In short, he requested that the appeal be dismissed.

14. From the reproduction of the evidence in brief as above, it can be seen that insofar as involvement of the accused is concerned, there are only two important witnesses, namely, Savitri, PW-2 and her father Rajaram PW-3.

15. Sarojkumar, PW-4, though was residing in the neighbourhood and was specifically requested by the father of the girls to keep an eye on their well-being, specifically stated that he was not aware about any harassment of the girls. In fact, as per this witness, the girls were called and asked whether

they have any problem and they answered in negative. This witness could not state the reason for Mamta to commit suicide. The deposition of this witness Sarojkumar, PW-4 therefore can be of no use to the prosecution.

16. So is the case with the testimony of Vimlaben, PW-7. She was also residing in the same neighbourhood. To her house, both the girls Mamta and Savitri used to go occasionally. She stated in the cross-examination that the girls upon being asked used to say that their family life is going on smoothly. Though she stated that there was some quarrel on 2.4.92, she failed to give any detailed account of the same or even to state as to who were involved in the quarrel. Her deposition, therefore, also does not in any manner further case of the prosecution.

17. Three material aspects of the case, therefore, in my view, are the oral evidence of the complainant Savitri, PW-2, her letter written to her father in March 1992, Ex.19, and the deposition of PW-3, Rajaram, father of deceased Mamta.

18. In his deposition PW-3, Rajaram gave no details of any harassment or torture of the girls at the hands of the appellants though he stated that when the girls visited Indore, they used to complain about such harassment. Again, in his deposition, though he stated that he was told by her daughter

Savitri that on the date of the incident, Mamta was beaten by her in-laws, he did not implicate any person individually.

19. Another material witness, of course, would be the complainant, Savitri. She was the sister of deceased Mamta. She was married to brother of Mamta's husband. They were all residing together in the same house. Her evidence therefore, would be of utmost importance. In her deposition, she stated that on the date of the incident, their father-in-law had given a severe beating to her as well as to Mamta. Mamta feeling sour by the pain, went inside the room to go to sleep. After half-an-hour, when Savitri tried to inquire whether Mamta has slept or not, she found that both the doors were locked from inside. In her complaint, however, she had stated that on the date of the incident, Mamta's husband had beaten her up. She has not stated anything about appellant No.1, father-in-law having beaten them up. In her deposition, this witness did not say anything about accused No.3, husband of Mamta having beaten her on the date of the incident.

Primarily, in the deposition Savitri, had only made one allegation about the ill-treatment and that was of being beaten up by the father-in-law on the date of incident itself. Thus, though unfortunate the suicide may be and young life of barely 18 years old Mamta was snuffed out on account of tragic incident, to my mind, the prosecution has

not been able to establish any direct relation to the suicide with physical or mental torture or harassment by the accused persons. As already noted, the version of Savitri, PW-2 suffers from material contradictions. She has not stated about any previous harassment, torture or physical or verbal abuse by any of the accused in her deposition. Her direct statement is against accused No.1 of having severely beaten up Mamta as well as herself on the date of the incident. No other allegation of any other kind of ill-treatment or torture is made in her deposition. As noted, this version of father-in-law having given severe beating to both the girls is in complete contrast with the version narrated by her in the complaint narrated before the police wherein she stated that on the date of the incident, husband of Mamta had given her slaps, upon which she had intervened. It would be highly unsafe to rely on such evidence to convict any of the accused.

20. In her letter Ex.19 also, Savitri has not stated anything about her or Mamta's ill treatment by the accused. In fact, the entire letter seems to be suggesting that she was married off forcibly by her parents on account of some mistake she might have committed. Nature of her mistake is not elaborated in the letter. She pleaded earnestly to her parents to take her back and get divorce. But not once in the entire letter, she suggests that she is being physically or mentally tortured or that her inability to continue to stay in the matrimonial home

is on account of the harassment by the in-laws. In fact, the letter goes on to state that the in-laws have also agreed to return all the belongings given at the time of marriage. It is only in the last line, on the side of the letter, she adds that both she as well as Mamta should be taken back or else they will not see them alive.

21. Firstly, in the entire letter, there are no allegations of any ill-treatment by the accused or any other family members either to Savitri or to Mamta. Secondly, in the main body of the letter, barring the last sentence, Savitri has talked about her desire to return home and to get divorce. There is no reference to Mamta in the entire letter except in the last line. Thirdly, even in the last line, there is no indication that there is harassment by the in-laws to the girls and that therefore it is not possible for them to live there. Lastly, in the cross-examination, she admitted that the letter was written in different parts. Possibility of last line being manipulated later on also cannot be completely ruled out. In any case, the said sentence also, to my mind, is not enough to implicate the accused for any torture or harassment of the girls. The entire thrust of the letter is that Savitri was married off by her parents against her wish on account of some personal mistake committed by her and that she is to be brought back home immediately.

22. Considering the entire evidence on record, I

find that there is insufficient evidence to involve any of the accused. Testimony of Savitri which could have provided crucial link about the harassment or torture of the deceased girl by her husband and relatives falls tragically short of legal requirements. Her testimony suffers material contradictions and I find that it is unsafe to base conviction on her deposition particularly when besides material contradictions about the role played by her father-in-law and husband of Mamta, there is no further corroboration in any other form.

23. Under the circumstances, the appeal succeeds. The conviction and sentence of the appellants in Sessions Case No.246 of 1992 is set aside. Bail bond stands cancelled. Fine, if paid, shall be refunded.

(Akil Kureshi, J.)

(vjn)